

JUN 10 2005



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June 10, 2005

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## FAX

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Michael A. Bertelson  
FROM

6  
PAGES (WITH COVER)

5418  
REFERENCE NO

50642/270979  
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## COMMENTS

Applicant: Christopher P. Carson  
Title: Surgical Navigation Systems and Processes for High Tibial Osteotomy  
Serial No./Docket No.: 10/084,291 50642/270979  
Filed: 02/27/2002

## PAPERS SUBMITTED:

1. PTOSB/21 – Transmittal Form;
2. PTO/SB/22 – Petition for Extension of Time Under 37 CFR 1.136(a);
3. PTO-2038 – Credit Card Payment Form; and
4. Response to Restriction Requirement of 04/29/2005.

Date: June 10, 2005  
By: Michael A. Bertelson, Reg. No. 54,713

## TO BE COMPLETED BY KS OPERATIONS CENTER

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PTO/SB/21 (09-04)

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<b>TRANSMITTAL FORM</b>  <small>(to be used for all correspondence after initial filing)</small>	Application Number	10/084,291
	Filing Date	02/27/2002
	First Named Inventor	Christopher P. Carson
	An Unit	3737
	Examiner Name	Ruth S. Smith
Total Number of Pages in This Submission	Attorney Docket Number	50642/270979

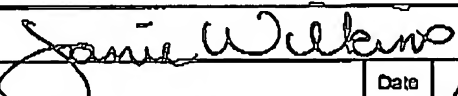
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## SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm Name	KILPATRICK STOCKTON LLP		
Signature			
Printed name	Michael A. Bertelson		
Date	June 10, 2005	Reg. No.	54,713

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Typed or printed name	Janie Wilkins	Date	6/10/05

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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JUN 10 2005

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT: Christopher P. Carson

SERIAL NO.: 10/084,291

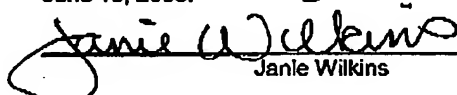
GROUP ART UNIT: 3737

FILED: Feb. 27, 2002

EXAMINER: Ruth S. Smith

FOR: **Surgical Navigation Systems  
and Processes for High Tibial  
Osteotomy**

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Attorney Docket No.: 50642/270979

Commissioner for Patents  
P.O. Box 1450  
Alexandria VA 22313-1450

DATE: June 10, 2005

RESPONSE TO ELECTION / RESTRICTION REQUIREMENT

Sir:

In response to the April 29, 2005 Office communication, please consider the following remarks and provisional election with traverse. In the April 29, 2005 Office communication, the Examiner required restriction among the following claim sets:

- I. Claims 1-11: Drawn to a process, classified in class 600, subclass 424.
- II. Claims 12-14: Drawn to an apparatus, classified in class 600, subclass 424.

Applicant provisionally elects claims 1-11 with traverse.

Applicant respectfully submits that the restriction requirement is erroneous and should be withdrawn. There are two criteria for a proper requirement for

Application No. 10/084,291  
Amendment Dated June 10, 2005  
Reply to Office Action of April 29, 2005

restriction between patentably distinct inventions: (1) the inventions must be independent or distinct as claimed; and (2) there must be a serious burden on the Examiner if restriction is required. MPEP § 803.

According to MPEP § 803, the Examiner must examine an entire application on the merits, including claims to distinct or independent inventions, so long as the search and examination of the entire applications can be made without serious burden. With respect to the restriction among the claims pending in the present application, Applicant respectfully submits that the Examiner has failed to establish any undue burden placed upon the PTO by the presence of all of the claims in the same application. A search of one invention would likely produce art related to the other inventions. Indeed, claims 1-11 and claims 12-14 are both classified in the same class and subclass. Applicant respectfully submits that examination of the claims of the entire application will not impose an undue burden.

### CONCLUSION

In light of the provisional election with traverse, the undersigned is of the opinion that this application is in a condition for allowance and respectfully requests the same.

A request for a one-month extension of time accompanies this response as well as a form PTO-2038 Credit Card Payment Form. No other fees are believed due at this time. To the extent that belief is incorrect, the Commissioner is authorized to charge any additional fees that may be due for this Response to